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APR 29 1996

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL ROOM

In the Matter of

Implementation of Sections of the
Cable Television Consumer Protection
and Competition Act of 1992:
Rate Regulation

Leased Commercial Access

) DOCKET FILE COPY ORIGINAL
)
) MM Docket No. 92-266
) Order on Reconsideration of the
) First Report and Order and
) Notice of Proposed Rulemaking
)
) CS Docket No. 96-60
)


COMMENTS OF METROPOLITAN DADE COUNTY, FLORIDA

Metropolitan Dade County would like to submit its comments as stated in correspondence previously submitted to the Federal Communication Commission ("FCC") on August 25, 1995 and March 19, 1996¹.

Based upon the foregoing concerns stated in the letters, we respectfully request the Commission to carefully consider the comments submitted by the County in this proceeding.

Attachments

Respectfully submitted,

By: 
Mario E. Goderich
Cable Television Coordinator
Consumer Services Department
Metropolitan Dade County
140 West Flagler Street, Rm. 901
Miami, Florida 33130
(305) 375-3677

¹Letters to Meredith J. Jones, Chief of the Cable Services Bureau and Reed E. Hundt, Chairman of the Federal Communications Commission (Attached).

METROPOLITAN DADE COUNTY, FLORIDA



STEPHEN P. CLARK CENTER

OFFICE OF COUNTY MANAGER
SUITE 2910
111 N.W. 1st STREET
MIAMI, FLORIDA 33128-1994
(305) 375-5311

March 19, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, Room 814
Washington, DC 20554

Dear Chairman Hundt:

The purpose of this letter is to reiterate my concern on behalf of the Dade County Board of County Commissioners regarding the leased access programming provisions of the Federal Communications Commission (FCC).

I understand that the FCC will be seeking to address those provisions in a reconsideration of its leased access rules on March 21, 1996. Enclosed for your review is a copy of a letter sent to Meridith J. Jones, Director of the Cable Services Bureau, requesting that the FCC review and amend its rules to guarantee local leased access providers carriage at fair nondiscriminatory rates.

Several local programmers in Dade County have raised serious concerns regarding leased access carriage. While channel availability is a significant factor in determining carriage, many programmers have an overall concern that the leased access rates charged are too high, and therefore, prohibitive, notwithstanding channel capacity on any system. The FCC established a formula in 1993 which serves as the maximum ceiling for leased access rates. Nationally and locally, cable operators are assessing the maximum rate. I have been advised that similar concerns have been expressed by others before the FCC.

I am requesting that the Commission consider amending its rules to promote the statutory goal of promoting diverse programming, through leased access, at fair market rates.

Sincerely,

Armando Vidal
County Manager, P.E.

Enclosure

The Honorable Reed Hundt
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cc: Honorable Chairperson and Members Board of County Commissioners
Sheila Rushton, Director, Consumer Services Department
Mario E. Goderich, Cable Television Coordinator
Tom Logue, Assistant County Attorney
Sherwin Grossman, President, Sherjan Broadcasting
Maria Silveira, General Manager, Telemiami
Carlos Torres Fletcher, Independent Producer, ETI, Inc.
Isabel Normiella, President, OLE TV
Fernando Hidalgo, President, Hidalgo Productions
Aidee Sixto, President, W21AX-Channel 21

METROPOLITAN DADE COUNTY, FLORIDA



STEPHEN P. CLARK CENTER

OFFICE OF COUNTY MANAGER
SUITE 2910
111 N.W. 1st STREET
MIAMI, FLORIDA 33128-1994
(305) 375-5311

August 25, 1995

Meredith J. Jones
Federal Communications Commission
Cable Services Bureau
2033 M Street NW
Washington, DC 20554

Dear Ms. Jones

The purpose of this letter is to voice concern on behalf of the Dade County Board of County Commissioners regarding the leased access provisions of the Federal Communications Commission and to request the Bureau to review those provisions. Several programmers in Dade County have alleged that the present leased access provisions have led to arbitrary and discriminatory rates and practices.

In 1984, Congress amended the Communications Act of 1934 to add a requirement that cable operators with 36 or more activated channels set aside part of their channel capacity for use by programmers that are not affiliated with them. This requirement is called the commercial leased access or "leased access" requirement. The Cable Television Consumer Protection and Competition Act of 1992 revisited the leased access requirement and directed the Commission to establish rules for determining maximum reasonable rates for leased access. Pursuant to that Congressional directive, the Commission established rules applicable to leased access channel rates in its May 3, 1993 Order for Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket 92-266, (the Rate Order), 8 FCC Rcd 5631(1993), at 531-538. See also, 47 C.F.R. 76.970.

In establishing regulations applicable to the development of leased access rates, the Commission adopted a methodology for calculating rates for leased access channels which takes into account the value placed on those channels by the cable operator. This methodology uses computed rates based on subscriber rates for basic, cable programming and premium services tiers and on rates paid by the cable operator for programming on those tiers of services. This methodology establishes the highest maximum rates for each of the three separate categories of cable programming defined in the rules.

The Commission determined that certain issues associated with obtaining leased access should be left for negotiations between the parties. For example, in establishing the maximum reasonable rates for leased access, the Commission noted that lower rates could be negotiated. It is our concern that the maximum allowable rates charged by operators in Dade County for leased access are prohibitive toward ensuring that local community needs are met.

On July 11, 1995, the Board of County Commissioners approved a resolution conditionally approving the transfer of control of the non-exclusive cable television license of Dynamic Cablevision of Florida, LTD from The Providence Journal Company to Continental Cablevision, Inc.

Meredith J. Jones

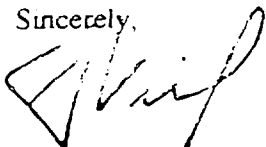
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During consideration of the transfer, local programmers raised serious issues regarding commercial leased access rates. Some noted the failure of the Licensee to grant leased access on its cable system at a fair and competitive rate. As a condition of the transfer, the Board moved that staff urge Continental Cablevision to consider the programming needs of the community when channel capacity is expanded. Section 8AA-46 of the Code of Metropolitan Dade County requires that a cable operator holding a license must provide commercial or leased access channels to the extent required by state or federal laws.

Dade County has advised those programmers that have expressed concern to pursue their legal remedies through the Federal Communications Commission (FCC) pursuant to section 47 C.F.R. 76.975.

I am requesting that the Commission review and amend its rules to guarantee local leased access providers carriage at fair non-discriminatory rates. This approach will better recognize the marketplace in which both cable operators and cable programmers operate. Amending the rules regarding leased access rates will also further the statutory goal of promoting diverse programming, because programmers that could not afford rates based on uniform pro rata pricing may be better able to afford the resulting lower rates. Additionally, allowing "fair and non-discriminatory" pricing should help promote fuller utilization of designated leased access channels by multi-cultural programmers.

Sincerely,



Armando Vidal
County Manager, P.E.

Attachments

cc Honorable Chairperson and Members Board of County Commissioners
 Sheila Rushton, Director, Consumer Services Department
 Mario E. Goderich, Cable Television Coordinator
 Tom Logue, Assistant County Attorney
 Sherwin Grossman, President, Sherjan Broadcasting
 Maria Silveira, General Manager, Telemundo
 Carlos Torres Fletcher, Independent Producer, ETI, Inc.
 Isabel Norwiella, President, OLE TV
 Fernando Hidalgo, President, Fernando Hidalgo Productions
 Aidee Sixto, President, W21AX - Channel 21

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